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THOUGHTS ON THE PROPERITY OF PREVENTING
MARRIAGES FOUNDED ON ADULTERY

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THOUGHTS
ON THE
PROPRIETY OF
PREVENTING MARRIAGES
FOUNDED ON
ADULTERY.

Tolle procul decepte faces, Hymenæe, maritas,
Et fuge turbato tecta nefanda pede. OVID.

LONDON :
Printed at the Philanthropic Reform, St. George's Fields,
by J. Richardson, No. 4, Lambeth-Road, Southwark,
For F. and C. RIVINGTON, No 62, St. Paul's Church-yard; and
J. HATCHARD, No. 173, Piccadilly.

1800.



THOUGHTS, &c.

To be convinced that Adultery is become more common in this country, than it used to be, we need only turn our eyes to our courts of law, where the numerous complaints upon this subject have excited such indignation, as in some measure to confound the boundaries of civil and criminal justice; and to have almost converted an action, in which reparation is sought for a private injury, into a trial for a public offence.

The encrease of this evil is, perhaps, the natural consequence of the growing wealth and luxury of this great kingdom; and, of a course of dissipation, not confined, as

formerly, to the winter season, and within the walls of the capital, but pursued with unremitting ardour during the remainder of the year, at watering places, and other places of public resort: But the circumstance which, while it affords an additional proof that this vice has made rapid strides amongst us, contributes mainly to assist it in its progress, is the frequency of intermarriage between the adulteress and the person with whom the offence has been committed; and her restoration, in consequence of that event, to society; not indeed to all its advantages; nor with unclouded fame, but to so much of the regard which is only due to virtue, and to such a degree of intercourse with the virtuous, as, in the opinion of all, who think familiarity with the guilty dangerous to innocence, cannot but be attended with the most serious bad effects. Nor indeed will any one, who considers that those, whom their own vanity, or the arts

of the seducer, have led astray, are not in general among the least distinguished of their sex for elegance and accomplishments, treat as matter of trifling importance to the interests of morality, the influence which the conversation and example of such persons may have upon the manners, the feelings, the opinions, and the principles, of the young and unexperienced.

Surely these considerations are of sufficient magnitude to make the Legislature pause a little on this new mischief of its own creation ; for these marriages have grown up within the course of the present century, and are no fruits of the common law of England, but owe their origin to the modern practice of legislating for individuals on the ground of particular offences. I mean not to blame the interference of Parliament, to free an injured husband from

the bonds which yoke him to dishonour ; but let not the attention of the Legislature be so entirely occupied with the sense of what is due to the individual, as to forget the interests of the public. Let it take some care to prevent the redress, which is granted to one member of society, from becoming the source of injury to the society at large ; nor so relieve, as to encrease the frequency of occasion for relief.

The practice of divorcing by act of parliament, for Adultery, may be dated from the tenth year of the reign of William III. —Lord Coke, among the examples given by him in his fourth Institute, of the Power and Jurisdiction of Parliament, though he takes notice of bastardising a child that is by law legitimate, makes no mention of Parliamentary Divorces ; from whence it may fairly be inferred, that no instance of

the Legislature's interposing for such purpose had occurred when he wrote.* We find among the private statutes of Charles II. an act "for the Lord Roos to marry again;" but, as, three years before this, an act had passed to illegitimate Lady Roos's children, the circumstance of the husband's not having been enabled to contract a new engagement in the first instance, shews, that the Legislature was not at that time in the habit of dissolving marriage by

* The act which was passed on the behalf of the Marquis of Northampton and his wife, fifth and sixth of Edward VI. cannot be considered as an instance of Parliamentary Divorce. It was made to confirm his second marriage, and legitimate the children of that marriage, under the following circumstances:—The Marquis had obtained a sentence of divorce from his former wife, for Adultery; and had, in consequence of such sentence, married again; it being then held, that a divorce on the ground of Adultery, was a divorce *a vinculo matrimonii*, which appears to have been the prevailing doctrine for some time after the Reformation. The law, however, was at this time considered as so doubtful on this subject, that the Marquis was advised to procure the act mentioned above, and the contrary was determined, on full consideration, towards the end of the following reign.

act of parliament.—It is indeed stated in the discussion, which took place in the House of Lords, upon the application of Lord Macclesfield for a Divorce, on account of the Adultery of his wife, in the tenth of William,* “ that such relief had been “ granted in extraordinary cases ;” but the statute book furnishes no instance of marriage dissolved on such ground, before that time, unless the act, in favour of Lord Roos, already mentioned, must be taken to have had that effect.

From this period Divorces for Adultery may be considered as among the ordinary instances of the exercise of Parliamentary authority ; the act passed in Lord Macclesfield’s case having been followed by three others for similar purposes, within the space

* See CHANDLER’s Debates, vol. ii. page 2.

of the two succeeding years, which conclude the reign of King William.

During the twelve years of Ann, however, only two acts of this description are to be found; and the same number occur in the thirteen years of George I.

In the course of George II.'s reign, which lasted thirty-three years, the Parliamentary Divorces amount to twenty-four; but the list of the statutes made since the accession of his present Majesty to the throne exhibits the titles of no fewer than ninety-nine Divorce-bills, of which the last four years furnish the large proportion of twenty-nine, and the year, which has just elapsed, ten; a greater number than is to be found in the annals of any of those which have preceded it.

From this statement it appears how greatly

the class of women divorced for Adultery has of late been augmented.—It is notorious, that of these many have married the Adulterer ; and some, by means of numerous connections, active friends, and perhaps, in a few instances, from their own share of personal merit, have, in a great measure, regained the countenance of the world.

But the effect of the readmission of persons of this description into society, is not to be estimated by the character and conduct of the individuals at present received. The door, once thrown open, cannot again be closed.—The world at large has, in such cases, no means of making nice discriminations ; it acts, and must act, by general rules ; and the strictness of ancient manners on this head, has already so far given way, that the restoration of all, who may be so remarried, to the privileges of innocence,

is now become inevitable ; but much less strong, than it is at present, will be their inducement to circumspection and propriety of behaviour, when they shall no longer be received, in a few instances only, upon personal considerations, on sufferance, and by favour, but return into society in numbers, and as of course.

If then these marriages have become not unfrequent, and are pernicious, let us see what are the objections to be urged against the obvious remedy, *viz.* A legislative provision to restrain the offending party from availing herself of the capacity of contracting a new engagement, which she derives from a Divorce-bill, to unite herself to the person with whom she has offended.

And first it is objected, that the remedy will be ineffectual, for that when the marriage of the parties is made impossible by

law, their continuance together will be considered as amounting to a marriage in fact, and that they will, under this notion, be still received.—I do not believe it.—The great body of moral feeling in this country is not yet so tainted, as to consider an unauthorised union of the sexes, in any case, as equivalent to a legal marriage.—There is, indeed, in the present age, an affectation of candour and liberality of sentiment, a charity more than Christian, which will not be at enmity with vice, if it can contrive to wear the mask of virtue; but there is among us no such hardihood in iniquity, as to give open countenance to a connection commenced in the foul crime of Adultery, and continued, not only without the sanction of law, but in defiance of the declared opinion of the Legislature, which it is the duty of every good subject to look up to with respect and reverence.

But then it is said that, those women who cannot be restrained from this offence by principle, and a regard for their duty, will never stop to weigh the degree of censure which the world may pass upon them, especially as the act is generally committed in the hope of concealment.—There may, indeed, be some thus thoughtless, and insensible to the fear of shame; and there are certainly many, who are sufficiently guarded against the danger of falling, by considerations of a higher nature than can be furnished by legislative provisions; but it argues little experience in the affairs of life, to be ignorant that there must ever be a large class in society, in whose minds a sincere regard for what is right, is mixed with no inconsiderable portion of human frailty; to whom the controul of their passions and propensities, in the moment of temptation, with every aid which the law of God or man will afford them, is yet a

matter of difficulty and trial ; and is it then to be imagined, that in the struggle between duty and inclination, the mind will totally exclude from its consideration the possibility of being discovered, and the consequences of detection? or can it be supposed, that the murmurs of apprehension have never been quieted by those protestations of unalterable attachment on the part of the seducer, which insinuate to the object of his arts, without expressing it, that in the event of discovery he would commit his honour to her keeping, and unite his fate to hers by a tie at once indissoluble and respectable?—It is not sound policy in the Legislature to have furnished the assailant of a married woman with so powerful an aid, as the suggestion, that in the worst that can happen to her, she will at least retain the consolation of passing a life of innocence with the man whom she prefers.

But what will they, who rely on this objection, say to those cases where the act of Adultery has been committed for the express purpose of dissolving one marriage in order to contract another?—If they assert, that the instances in which this is understood to have happened, are not very numerous,* we may answer, that every bad practice must have a beginning; and that this, it is true, is only as yet in its infancy, but that it is not a very wise policy to wait till an evil is grown up to maturity, before we take any steps to put a stop to it; and that there is but too much reason to apprehend that a few instances of persons, who have succeeded in this project, without forfeiting their situation in the world, may excite in the minds of many, among such as are discontented with their lot in marriage,

* No one, who is qualified to speak upon this subject, by any knowledge of what is passing in society, will deny that some such exist.

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an inclination to make the same experiment, and the hopes of similar success.

*Si cæpta exsequor,
Forsan jugali crimen abscondam face;
Honesta quædam scelera successus facit.*

In truth, when it is considered that the act of Adultery must often, from its very nature, be inferred from circumstances, amounting in themselves to little more than acts of indelicacy, or instances of disregard to the forms of life, from circumstances which it is in the power of the parties themselves to create, and afterwards, when they shall have served their purpose, to invalidate, it seems not improbable, unless the Legislature shall pay more attention to this subject than it has lately bestowed upon it, that the fact of the Adultery will soon become a suggestion of course, on an application to Parliament for a Divorce-bill, and be used as a mere fiction of law, like the

facts in a fine, or common recovery; so that, except the trouble and expence of an act of Parliament, parties will experience little more difficulty in disengaging themselves from the bonds of matrimony, than they do now in setting free their estates from the fetters of an entail.

Another objection made by some to the introduction of the provision here recommended, is, that it might operate as an encouragement to the seducer, by releasing him from all apprehension of being called upon to marry the victim of his seduction. But we must depend for the preservation of female honour upon the disposition to defend it, and not on the absence of assault; nor am I sure that the man, who has sufficient feeling, or regard enough for the object of his pursuit, to consent to marry her, after the commission of the offence, would not, beforehand, be

rather deterred from endeavouring to injure her virtue, than encouraged to attempt it, by the certainty of having nothing in his power to offer her ^{the} way of reparation.

But the argument mainly relied on in opposition to any provision of this kind, is, that the consequences of the offence will fall with unequal weight upon the offenders; and that it is cruelly unjust, to make a provision, which must be considered as the severest punishment: on the woman, when the seducer in general most deserves the vengeance of the law.—There is certainly no reason, why the man, with whom the offence was committed, should not be made the subject of punishment, to the extent of any penalty, which it may be thought advisable to annex to the act of Adultery; but seduction is unfortunately a practice of too secret a nature to come often within the reach of human tribunals. The degree, in which it has

existed, its various artifices, its falsehoods in respect to matter of fact, or the fallacies of its reasoning, are confined in most cases to the knowledge of the two parties, the seducer, and the seduced; for if the seduction had been visible to others in its progress, its final success would probably have been prevented. The notion, however, that it is unjust to punish one offender, unless another, under different circumstances, can be made to suffer, in proportion to his share in the offence, is founded on a total misapprehension of the principles of penal law. Punishment is not inflicted upon earth from resentment against criminals, but from the necessity of preventing crimes.—And though the ~~Legislature~~^{Officer} may be unable so to adjust his pains and penalties, as to make them fall upon all the parties to a particular act, according to their respective degrees of moral guilt, yet that is no reason, why he should refrain from placing them, where

they will operate with effect to guard the public from the repetition of the crime. With what clamour might those, who entertain such opinions exclaim against the constant practice of admitting one offender to give evidence against another, not unfrequently less guilty than himself, and allowing him to escape from the consequences of an offence against society; by an act of treachery towards his comrade?—If there be any truth in notions of this kind, it will become us at once to shut up our statute-book, and throw the records of our courts of criminal law into the flames, as a collection of sentences founded in cruelty and injustice.

Neither is it true, that the provision in question can, with any propriety, be considered as inflicting punishment on the woman.—It imposes upon her no penalty.—If the shame, which follows this offence,

falls upon her with greater weight than upon the other offender, the difference is not created by any of the artificial institutions of society, but by the decree of Nature herself: it is the consequence of the very conformation and texture of the female mind, in which chastity is so entwined and enterwoven with every other excellence and moral quality to be found there, that it can not be torn away without injury to the whole frame; accordingly the loss of it has ever been felt among women, as the heaviest disgrace that could befall them. And the point now in discussion, is, not whether the Legislature should inflict punishment, but whether it shall any longer continue to counteract this great natural feeling, by allowing the sacred veil of marriage to be spread over his colleague by the Adulterer, and thus leaving it in the power of an accomplice to

regrant the forfeited privileges and dignity of virtue.

There are, however, some who in the heat of their opposition to any measure of this kind, contend, that, Parliament should rather come to a resolution to pass no more divorce-bills, for that the offence of the wife is always provoked by the previous misconduct of the husband. A resolution to this effect, would be attended with objections too serious to be got over ; but, while it must operate as a grievous hardship upon men engaged in many lines of life (in the professions for instance of the army and navy), in which the necessity of long absences in the service of his country, obliges the husband to leave his wife not unfrequently, under no other guard than her own conscience and the law, it would not place the woman, who has been seduced, in a more favourable

situation than the clause which is the object of their indignation : for the adulteress would not be more respected for continuing to bear the name of the man, whom she had injured ; and her situation in regard to marriage would be something worse than if she were divorced with liberty to marry any person, except the adulterer ; unless indeed it is hoped that the husband, not being able to set himself entirely free from the wife who has defiled his bed, may receive her back again, after her guilt has become notorious, in the true spirit of the German School ; or may even be induced to connive at her amours, rather than publish his own disgrace without hope of redress. But what do those, who use this language, mean by the terms "provoked by the misconduct of the husband"? If the expressions imply only inattention, occasional ill-humour, or any other misconduct of that nature, it is abominable, to hold out the ordinary failings and

imperfections, to which all mankind are more or less liable, as a ground of provocation to this crime : and if the word “ misconduct” is used for adultery on the part of the husband, the law is already as they would have it ; for a marriage cannot now be dissolved in Parliament, without a sentence of divorce from bed and board, first pronounced in the ecclesiastical court ; and no such sentence will be obtained there, in cases where it is in the power of the wife to recriminate, and shew that the husband has on his side been unfaithful to the marriage vow.

But when all argument has failed, the last resource of our opponents is a false appeal to compassion ; and a reference has been made to a Sermon, preached in praise of mercy, at the Magdalen.—The Rev. and learned Prelate, whose charitable labour has been thus alluded to, will probably find

no great difficulty in reconciling his discourse in support of that noble institution, which does honour to the age and country in which we live, with his vote, as a lord of Parliament, against the permission of marriages founded in Adultery : the Magdalen is a very different asylum from the arms of a seducer. The Magdalen is a place of refuge for the penitent ; but it is no mark of contrition in the adulteress, to seek the society of her accomplice ; nor is there much ground to expect, that her mind will become corrected and purified from vicious inclinations, under the guidance of him who first introduced her to the practice of vice. He may, perhaps, use her ill—he may not improbably embitter the remainder of her life, by occasional reproaches for what is past, and in that manner make her acquainted with the ill consequences of

guilt; but he is not qualified to bring her back by gentle means to virtue.

True compassion to the woman, who has thus been led astray, will concur with sound policy in a measure to prevent her from being impelled by the hope of covering her shame, to vow honour and obedience at the altar, to a man, whom, if ever she should come to have a due sense of what has happened, she will be in danger of regarding with feelings too nearly allied to contempt and indignation.

The Legislature will best shew its mercy in taking care to provide the object of its censure with an adequate maintenance for her support. And it would, I think, be no improper exercise of its power, to make the adulterer contribute, in proportion to his ability, to her means of comfort, which, while it would secure her against all tempt-

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ation to look towards him in future for assistance, might perhaps have as salutary an operation, in the way of penalty, to check the practice of seduction, as any punishment which it will be found in the power of law, without inconvenience, to carry into effect.

[Printed at the Philanthropic Reform, St. George's Fields, by J. Richardson, No. 4, Lambeth-Road,
Southwark.]

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